

## **REMARKS**

The Applicants have carefully studied the outstanding Office Action. The Examiner's indication that claims 30-37, 40, 41, 43 and 44 are allowed is gratefully acknowledged. The Examiner's indication that claims 26, 28, 29 and 39 are objected to as being dependent on a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, is gratefully acknowledged. The present response is intended to be fully responsive to all points of rejection raised by the Examiner, and is believed to place the application in condition for allowance. Favorable reconsideration and allowance of the application are respectfully requested.

### **Claim rejections - 35 USC § 112**

Claim 48 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Examiner has stated that "As to claim 48, it is not clear as to what structural element of the calibration checking device is being claimed."

The applicants have cancelled without prejudice claim 48, thus rendering the Examiner's grounds for rejection moot.

### **Claim rejections - 35 USC § 102**

Claims 21, 22, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Porter et al., US 4,926,164 A.

The Examiner has stated that "In regards to claims 21 and 22, Porter teaches a device 1 mandating calibration after expiration of a number of tests (see col. 4, lines 25-32). In the event that 750 [breath] tests are conducted without a calibration check, the device will assume interlock conditions where the visual and audible alarms are initiated (enabling mechanism).

As to claim 27, it is inherent that Porter's interlock conditions are electronic signals to the breath tester device 1."

The applicants have amended claim 21 by incorporating therein the subject matter of dependent claim 38.

The applicants respectfully submit that the Examiner is incorrect regarding his assertions as to what is described in Porter et al. The "device" described in Porter et al is a vehicular breath tester for alcohol levels in the breath. To the best of the applicant's understanding of the (apparently) erroneously presented description in col. 4, lines 25-32 of Porter et al., as cited by the Examiner, this breath tester device only **warns** the driver that a mandatory calibration check is approaching, and provides **interlock** conditions when the check number is reached. The applicants submit that this is merely a conventional mandatory calibration check mechanism such as exists on many prior art clinical and industrial instruments, applied in Porter et al., to a breath tester, and which provides **warning** of the need for calibration and **interlocking** if the calibration threshold is reached. The form or performance of the calibration check itself is nowhere mentioned or suggested in Porter et al, and may well be external and unrelated to the device described in Porter et al. Nowhere, to the best of the applicants understanding is there any mention or suggestion in Porter et al., of a **calibration checking unit**, whose function is to actually participate in checking the calibration of the gas analyzer, and certainly, nowhere is there any mention of calibration gas to execute the calibration check.

In contrast to what is described in Porter et al., amended claim 21 of the present application recites:

"A calibration checking device for use with a gas analyzer, comprising:

a calibration **checking** unit; and

an enabling mechanism actuated by use of said calibration checking unit, for enabling operation of said gas analyzer, and wherein said calibration checking unit

releases a **calibration checking gas** of known composition into said gas analyzer.”  
(Emphases added)

The applicants therefore respectfully submit that amended claim 21 is free of the Examiner’s grounds of rejection under 35 USC § 102(b) as being anticipated by Porter et al., and that such rejection should be withdrawn, and claim 21 allowed.

Claims 21, 23, 27, 38, 42, and 66 are rejected under 35 U.S.C. 102(b) as being anticipated by (Porter et al, US 4,926,164A), which the applicants have understood to mean, by Bathe, US 5,752,504.

The Examiner has stated that “In regards to claim 21, Bathe teaches a calibration device (see fig. 2) having an enabling mechanism (control panel) for activating the calibration mode (see col. 4, lines 15-26).

As to claims 23 and 66, Bathe teaches the device is operative to track the time between calibrations or track the time of a calibration cycle (See col. 4, lines 24-26).

As to claim 27, Bathe teaches the enabling mechanism is an electronic signal (“perform calibration signal”) (see fig. 2 and col. 4, line 22).

As to claim 38, Bathe teaches releasing a calibration gas (see col. 4, line 15).

As to claim 42, Bathe teaches an enabling mechanism is actuated by means of an integrated circuit (control panel) (see col. 4, line 23).”

The applicants respectfully submit that the Examiner is incorrect both regarding his assertions as to what is described in Bathe, and in his implication regarding what is recited in claim 21. To the best of the applicants’ understanding thereof, Fig. 2 of Bathe and the description in col. 4, lines 15-26 describe a system whereby a therapeutic gas administering system is provided with gas monitoring facilities even when the internal gas monitors (gas analyzers) are being calibrated and hence not operative in the system. In the cited paragraph in col. 4, it is stated specifically that “the calibration mode is user activated” or that “a timer ..... activates the calibration mode at specific intervals”. Additionally, in col. 2, lines 7-8 of Bathe, it is stated that “The system is

initiated when the operator enters the calibration procedure”. Contrary to what is stated by the Examiner, nowhere is there shown or suggested in Bathe that the so-called calibration device activates the calibration mode.

Furthermore, nowhere does the Bathe system appear to mention or describe any calibration checking device, and even if such is to be understood from the mere presence of the calibration gas supply, then certainly nowhere in Bathe is there any mention or suggestion of such a “calibration checking device” enabling or disabling the operation of the gas analyzer, which are understood to be the “monitoring cells” of Bathe. No causal connection is established between the two other than that the monitor cells require the calibration gas in order to be calibrated. On the contrary, the calibrating cycle is only performed when the gas analyzers are **not** actuated in the system.

In contrast to what is described in Bathe, amended claim 21 of the present application recites:

“A calibration checking device for use with a gas analyzer, comprising:

a calibration checking unit; and

**an enabling mechanism actuated by use of said calibration checking unit, for enabling operation of said gas analyzer, and wherein said calibration checking unit releases a calibration checking gas of known composition into said gas analyzer.”** (Emphases added)

Furthermore, contrary to what is asserted by the Examiner, nowhere in claim 21 of the present application is there recited “an enabling mechanism (control panel) for activating the calibration mode”. On the contrary, claim 21 of the present application recites that it is the calibration checking unit which actuates the enabling mechanism, and not vice versa.

The applicants therefore respectfully submit that amended claim 21 is free of the Examiner’s grounds of rejection under 35 USC § 102(b) as being anticipated by Bathe, and that such rejection should be withdrawn, and claim 21 allowed.

Claims 22-24, 26-29, 39, 42, 45-47 and 66 are all dependent on claim 21, and recite additional patentable subject matter. Therefore, claims 22-24, 26-29, 39, 42, 45-47 and 66 are also deemed allowable.

#### **Claim rejections - 35 USC § 103(a)**

Claims 24 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Porter et al, US 4,926,164 A as applied to claim 21 above, and further in view of Sheehan, US 5,357,971 A.

Claims 24 and 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bathe, US 5,752,504 A as applied to claim 21 above, and further in view of Sheehan, US 5,357,971 A.

Since all of claims 24 and 45-47 are dependent on amended claim 21, which the applicants submit is deemed allowable, and recite additional patentable material, claims 24 and 45-47 are also deemed allowable, and withdrawal of the grounds of rejection of these claims is respectfully requested.

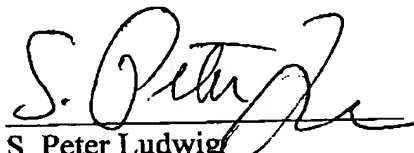
#### **Conclusion**

The applicants therefore respectfully submit that, in the light of the arguments mentioned above, all of claims 21-37, 39-47 and 66, as appropriately amended or as originally filed, are novel and unobvious over the prior art cited by the Examiner, and are therefore deemed to be allowable.

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Reconsideration and prompt allowance of this application are therefore respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "S. Peter Ludwig", written over a horizontal line.

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